



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DA 12-1377

August 21, 2012

Larry Mayes
President/CEO
Adak Eagle Enterprises, LLC
Windy City Cellular, LLC
1410 Rudakof Circle
Anchorage, Alaska 99508

Re: Windy City Cellular, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 and Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208

Dear Mr. Mayes:

On April 3, 2012, Windy City Cellular, LLC (WCC) filed a petition for waiver of Section 54.307(e) of the Commission's rules, which establishes a total limit on high-cost universal service support of \$250 per line per month.¹ Adak Eagle Enterprises, LLC (AEE) similarly filed a petition for waiver of Section 54.302 of the Commission's rules on May 9, 2012.²

The Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) have reviewed the information provided by WCC and AEE in their petitions, as well as information received from other parties in response to the petitions. Together, these materials raise significant questions regarding the reasonableness of petitioners' revenues and expenses. Based on our review of the information already provided, the Bureaus now request additional

¹ Windy City Cellular, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed April 3, 2012); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. Filed Dec. 18, 2011) (and consolidated cases); 47 C.F.R. § 54.302. In a supplemental filing, on May 4, 2012, WCC alternatively requested a full waiver of the \$250 cap for two years and, if feasible, application of the waiver retroactively to January 1, 2012, the date that the reduction in funding became effective. *See Notice of Ex Parte and Supplement*, WC Docket No. 10-90 et al. (filed May 4, 2012).

² Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed May 9, 2012). The May 9th petition was rescinded and refiled on May 22, 2012 (AEE Petition).

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information.³ This additional information will supplement the Bureaus' analysis of whether there is good cause to grant the requested waivers.

Both WCC's and AEE's initial filings provided certain financial information at a highly aggregated level. The questions set forth below request additional details and clarifications. For example, we seek additional details on corporate staffing, lease agreements, corporate operations expenses, and contracts. We also seek additional information on specific expenses that have come to light during the course of this proceeding, including information that raises questions regarding the extent to which AEE actually operates out of its offices on Adak Island. In addition, AEE's initial filing showed that its costs have grown considerably since its 2005 estimates. The Bureaus also require additional information on employee compensation. The Bureaus need to better understand the companies' operations in order to determine whether WCC and/or AEE needs "additional support in order for its customers to continue to receive voice service in areas where there are no terrestrial alternatives."⁴

Please provide full and complete responses to the following questions:

A. Questions for AEE:

1. In 2005, AEE petitioned the Commission for, among other things, a study area waiver and to become a member of NECA for the purpose of receiving universal service support and in order to participate in the NECA pools. In its 2005 petition, AEE estimated high-cost loop support for 2005 at \$499,865.⁵ AEE's projected high-cost loop support for 2012 as calculated by NECA, prior to any of the reforms adopted by the Commission, is approximately \$1.3 million.⁶ Please explain in detail what has driven AEE's costs to increase so significantly. We note that, during the same time period, the national average cost per loop for calculating support has increased from \$344 to \$506, or approximately 47%, while AEE's high-cost loop support has increased more than two and one-half times. We also note that AEE reported approximately 200 loops in 2005, while today it reports only 150 loops. In response to this question, please provide actual cost data with appropriate explanations for the significant increases in costs.
2. While AEE has previously provided some detail regarding its employees and their compensation for 2011, please provide the name, position, responsibilities, and annual compensation of the ten highest paid employees of AEE and each of its affiliates⁷ for 2009, 2010, and 2011. Provide employment agreements, if any, with these individuals. In addition to salary, include as part of compensation any benefits, dividends, increases in equity, sales of equity, or any other non-salary forms of compensation.
3. Corporate Operations Expenses as presented in Tab 4 of AEE's petition indicates that AEE employs an [REDACTED], [REDACTED], [REDACTED], [REDACTED],

³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17839-42, paras. 539-43 (petitioners seeking waivers shall provide any additional information requested by Commission staff).

⁴ *Id.* at 17849, para. 540.

⁵ *Id.*

⁶ See National Exchange Carrier Assoc., Inc., NECA's Overview of Universal Service Fund, Submission of 2010 Study Results, at App. H (filed Sept. 30, 2011). <http://transition.fcc.gov/web/iatd/neca.html>.

⁷ See 47 C.F.R. § 32.9000.

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[REDACTED], and [REDACTED]. Please explain the need for the size of your corporate staff and, in particular, [REDACTED] given that AEE has approximately 150 subscriber lines.

4. Tab 4 also indicates that [REDACTED] of corporate operations expense is allocated to AEE's non-regulated operations, *i.e.*, AEE Cablevision, Windy City Broadband, and Windy City Cellular. Given that the same staff operates both the regulated wireline business and the aforementioned non-regulated business, please explain why almost [REDACTED] of corporate operations expense is allocated to the regulated operations.
5. AEE's 2011 general ledger indicates that the company incurred [REDACTED] and [REDACTED] for Office Telephone and Postage, respectively, for 2011. Given the size of AEE's operations, please explain these [REDACTED] telephone and postage expenses.
6. AEE's 2011 general ledger indicates that the company incurred [REDACTED] for "Lobbying" expenses. Please itemize these expenses and explain the reason for each item. The 2011 general ledger also indicates that the company incurred [REDACTED] for "Gifts." Please provide a list of all recipients of gifts during 2011 and the reason for each gift.
7. In response to AEE's petition, GCI provided the testimony of Michelle D. Barnett.⁸ In this testimony, Mrs. Barnett states that AEE's Continuing Property Records (CPRs) "indicate since the USF money started flowing AEE has invested in the following:
 - \$2.7 million dollars in underground fiber optic cable,
 - at least six vehicles, four of which appear to be purchased new,
 - a \$94,920, 26' Alaskan HT Galley boat,
 - multiple computers,
 - software,
 - furniture,
 - two office remodels (one for the Anchorage office which cost in excess of \$171,000),
 - artwork,
 - snow removal equipment,
 - two new four wheelers,
 - a lawnmower,
 - a \$12,000 concrete saw, and the list goes on."⁹

Please explain how the specific expenses highlighted in Mrs. Barnett's testimony are necessary to the provision, maintenance, and upgrading of facilities and services supported by universal service. Please also provide the CPRs for AEE and any of its affiliates (if available) for each of the last three years.

⁸ See Letter from John T. Nakahata, Counsel to General Communications, Inc., to Marlene H. Dortch, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 6, 2012) (attaching testimony of Michelle D. Barnett filed in In the Matter of the Revenue Requirement Study and Tariff Filing Designated as TA8-684 filed by TDX Adak Generating, LLC for an Interim & Permanent Rate Increase, Docket U-10-104, The Regulatory Commission of Alaska (Sept. 6, 2011), available at <http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=751ae98b-dc85-4234-9ed8-c82b6a5658d8> (Barnett Testimony)).

⁹ Barnett Testimony at 10.

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8. In view of the testimony that AEE paid approximately \$171,000 to remodel AEE's Anchorage Offices, as well as to purchase a variety of office equipment,¹⁰ please provide the number of AEE employees who work in the Anchorage office, the number of employees who work on Adak Island and for those employees who split their time between Anchorage and Adak Island, the percentage of time these employees spend in Anchorage.
9. Please list and provide details of all lease agreements, if any, between AEE and affiliated and non-affiliated companies in effect for the last three years, including the purpose of the lease agreements. Provide copies of all listed lease agreements.
10. Please include copies of any contracts entered into between AEE or WCC and any business or governmental entities which pertain to the provision of fixed or mobile voice and/or broadband service, including collocation, access, or other similar services.
11. Exhibit 3 indicates that AEE spent approximately [REDACTED] for "External Relations." Please provide additional information about what was included in that expense, including the cost studies and consulting contracts, advertising and corporate image expenses. Please also discuss the percentage of time that Ms. Weaver spends on External Relations and what those duties include.
12. Exhibit 8, pages 5 and 13 of the Adak Eagle Enterprises, LLC and Subsidiary 2010-2011 audited financial statements, specifically the income statement, discloses a [REDACTED] income tax benefit for 2011. We understand such an item to represent some type of reduction in tax liability, and as such it would normally be an addition to income. Why was the [REDACTED] tax benefit subtracted from income on this statement? Also, page 14, Note 3, reflects that AEE has approximately [REDACTED] remaining in federal net operating loss carry forwards, which expire in 2029. If so, why did AEE not use this operating loss carry forward to further reduce its [REDACTED] income tax liability in 2010?
13. Please provide copies of loan documents from all entities to which AEE is currently indebted directly or indirectly, including the Rural Utility Service, [REDACTED] and any others. Loan documents should include:
 - a. The original loan package and modifications/updates submitted for evaluation for credit sent to each of these entities;
 - b. All correspondence to/from creditors since 2008 regarding any issue directly or indirectly involved with compliance with loan agreement covenants and related replies; and
 - c. All security agreements and financing statements.

B. Questions for WCC:

1. Please provide an explanation for any projected increase in cost greater than 10% (from Actual Base Yr 12/31/11 to 2012-2016) for any cost category. For example, we observe that in the revised Exhibit 8, WCC projected a substantial increase in expense for [REDACTED] and [REDACTED] from the Base Year 2011. In addition, the second to last page on Original Exhibit 8 projects significant increases for [REDACTED] expenses. Please provide the attachment mentioned in the notations that provides

¹⁰ *Id.*

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additional information regarding the breakdown. To the extent these increases are related to the operations of the [REDACTED], please provide a discussion of the additional expenses associated with that [REDACTED].

2. Please provide the type and amount of any expenses paid by WCC to AEE for each of the last three years. Please explain the reason for any increases greater than 10% for any category of expense. Among other things, please explain the basis for the increase in Accounts payable, affiliates (AEE) from [REDACTED] to [REDACTED] from 2010 to 2011, as well as the increase in expenses paid to [REDACTED] from [REDACTED] to [REDACTED] (as noted in Exhibit 11).
3. Please provide an updated estimate for 2012 of the cost associated with WCC's retail operations in Adak. Discuss all components of this estimate, including but not limited to the retail lease, handset inventory and personnel costs. Additionally, please explain the business rationale for this expense given that [REDACTED] have been in decline and collectively have never exceeded [REDACTED]/year in any event.

If either WCC or AEE requires that any information or documents responsive to this letter be treated in a confidential manner, it may file the information in accordance with the Wireline Competition Bureau's *Protective Order* in this proceeding.¹¹

We appreciate your willingness to work with the Bureaus to help us understand and evaluate both the initial waiver request and the forthcoming supplemental information. In the meantime, we have stopped the 45-day review period until we have the additional information required to evaluate the waiver request. We believe this is necessary to allow sufficient time not only for the Bureaus to evaluate this new information, but also for third parties to have an opportunity to provide feedback to the Bureaus on the submission.

¹¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. 2010).

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As such, the clock has stopped effective today, August 21, 2012. The Bureaus will restart the clock once the new evidence has been provided to us in a format and with sufficient explanation and back-up information to enable us, and third parties entitled to have access to the information, to adequately evaluate it.

If you have any questions please call Gary Seigel at (202) 418-0879 or Sue McNeil at (202) 418-7619.

Sincerely,

Julie A. Veach
Chief, Wireline Competition Bureau

Ruth Milkman
Chief, Wireless Telecommunications Bureau